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E.O. 12958: DECL: 05/15/2017

TAGS: [PARM](#) [PREL](#) [EFIN](#) [KNNP](#) [IR](#) [AU](#)

SUBJECT: AUSTRIAN ACTIONS ON IRAN INCONSISTENT WITH
OBLIGATIONS UNDER UNSCRS 1737 AND 1747

REF: A. STATE 038553

[B](#). STATE 040440

Classified By: ISN PDAS Patricia A. McNerney,
for reasons 1.4 (b) and (d).

[1](#). (C) ACTION REQUEST: Post is requested to deliver the points at paragraph 5 to appropriate government officials regarding Iran's light water reactor tender, and the need to expeditiously implement Austria's Chapter VII obligations regarding Bank Sepah and Bank Sepah International. Posts may draw from paragraphs 2 and 3 as appropriate. Department requests that post report GOA's response no later than close of business Friday, May 18, 2007.

[2](#). (U) BACKGROUND ON LIGHT WATER REACTOR TENDER. The Nuclear Power Production and Development Company of Iran (NPPD) recently issued an invitation for bids for the construction of two large-scale nuclear power plants in Iran. The invitation cited a bank account held by Austria's Creditanstalt as the repository for an initial nonrefundable fee of 15,000 Euro by qualified bidders. (U) One of the sanctions imposed under UNSCR 1737 is a requirement for the immediate freeze of funds, other financial assets and economic resources that are owned or controlled by the persons or entities designated in the Annex of UNSCR 1737, or by entities owned or controlled by them or acting on their behalf or at their direction. NPPD is described in the invitation as an "affiliate" of the Atomic Energy Organization of Iran (AEOI), and AEOI is one of the entities listed in the annex to 1737. AEOI is thus directly subject to the asset freeze under 1737, and NPPD, depending on the precise nature of its relationship with AEOI, appears likely to be captured as well.

(U) As a separate matter, however, although paragraph 12 of UNSCR 1737 would normally require Austria to freeze funds owned or controlled by AEOI (and thus potentially NPPD), this particular transaction appears to be exempted from sanctions by para 12(d) of the resolution, which allows funds to be transferred if the money is necessary for activities directly related to equipment for use in light water reactors. Though the para 12(d) exemption would thus apparently allow Austria to permit Creditanstalt to act as a repository for bids, we note that this exemption was included in order to grandfather the ongoing Russian-supplied Bushehr LWR project, and facilitating Iran's request for bids would clearly be inconsistent with this purpose. In addition, it would send a message to Iran that it can continue to proceed with business as usual despite its continued defiance of the Security Council and the international community. Moreover, any funds held by Creditanstalt that are owned or controlled by AEOI and NPPD and that would not fall within the 12(d) or other asset freeze exemptions would likely be subject to freezing under UNSCR 1737.

(U) In addition, it is our understanding that the European Council Regulation implementing UNSCRs 1737 and 1747 applies an export ban and other restrictive measures against Iran with respect to, among other things, items on the Nuclear Suppliers Group lists, and does not appear to make any exceptions for light water reactors (we understand the regulation also prohibits "brokering" and "financial assistance" related to such items). While we are not in a position to tell Austria how to apply EU law, it would seem that permitting this action by Creditanstalt may also be potentially contrary to, at a minimum, the spirit of the EU Regulations.

(C) On Friday, May 4th, Treasury U/S Levey spoke with Mr. Pichler, Head of Legal for Creditanstalt to discuss the advertisement for AEIOI's reactor project that instructed interested parties to deposit money into an identified Creditanstalt account.

(C) Pichler said that the bank is very unhappy with this situation. The account belongs to the Iranian mission to the IAEA, and Pichler said that the bank had no idea that the account was being used this way. He said they have discussed this issue with the Iranians, and told them that the bank "would not accept being used in this way." They told the Iranians that if any money is deposited into the account in response to this ad, that it must be immediately withdrawn (by the Iranians). He was unable to say whether money had been deposited and reported that he would be able to give that information only to his regulator (that is to say that the USG would need to approach the regulator for that information).

(C) According to Pichler, under Austrian law, since this is considered a diplomatic account, they cannot freeze the funds. U/S Levey asked if they could close down the account instead. The bottom line is that the bank could close down the account, but it would "be very difficult" to do and could "cause a riot."

13. (U) BACKGROUND ON BANK SEPAH AND BANK SEPAH INTERNATIONAL.

Just as UNSCR 1737 requires UN Member States to freeze the assets of AEIOI, UNSCR 1747 imposed the same requirement with respect to Iranian entities Bank Sepah and Bank Sepah International. Immediately following passage of the resolution, we asked all states (REF A) to move swiftly to freeze Bank Sepah assets to ensure Iran could not transfer Bank Sepah's funds and evade the sanctions. We also provided (REF B) specific information on the activities of Bank Sepah and Bank Sepah International requiring follow-up from the listed banks in host countries, including Austria. Although the Austrian government agreed on the need to implement their UNSCR 1747 obligations, Austria claimed that it could not freeze Bank Sepah's assets until the EU regulations were passed, citing lack of legal basis. However, on 23 April, the EU Council adopted regulations (Council Regulation (EC) No. 423/2007) providing what we understand to be the necessary legal basis to freeze the assets of Bank Sepah and Bank Sepah International. Bank Sepah and Bank Sepah International, financial linchpins for Iran's missile program, may have enjoyed free movement of funds to and from Austria in the absence of an asset freeze. With the EU regulations now in place, we request information from the Austrian government on the steps they have taken or will take to implement the freeze.

14. (C/REL AUSTRIA) OBJECTIVES

-- Welcome the steps Austria plans to take to fully and swiftly implement its obligations under UN Security Council resolutions 1737 and 1747.

-- Convey to Austria U.S. views that allowing Creditanstalt to provide a bank account to and process transactions for an organization affiliated with a UN Security Council-sanctioned entity such as AEIOI in order to facilitate bids for nuclear reactors in Iran is contrary to the spirit, if not the letter, of the UN Security Council Resolutions.

-- Remind Austria that although UNSCR 1737 para 12(d) provides an exemption for funds that are necessary for activities directly related to equipment for use in light water reactors, we note that this exemption was included in order to grandfather the ongoing Russian-supplied Bushehr LWR project, and facilitating Iran's request for bids would clearly be inconsistent with this purpose. This action would also undermine the collective multilateral efforts at the Security Council, reflected in UNSCRs 1737 and 1747, to convince the Iranian regime to change its current confrontational course, comply with its international obligations, and accept the P5 1 offer to begin discussions on its nuclear program. It would send a message to Iran that it can continue to proceed with business as usual despite its continued defiance of the Security Council and the international community.

-- Note our understanding that, in addition, the European Council Regulation that applies an export ban and other restrictive measures against Iran with respect to, among other things, items on the Nuclear Suppliers Group lists, does not appear to make any exceptions for light water reactors. Permitting this action by Creditanstalt thus may also be potentially contrary to, at a minimum, the spirit of the EU Regulations.

-- Encourage Austria to take steps to prevent Creditanstalt from providing banking services related to the tender and to investigate whether Creditanstalt also holds other NPPD or AEOI funds that are not related to light water reactor programs that could be subject to freezing under UNSCR 1737.

-- We are also interested in an overview of steps Austria and Austrian financial institutions have taken to freeze the assets of all entities and individuals designated under UNSCR 1747. Our immediate concern, however, is asset flight from Bank Sepah and Bank Sepah International, and we would like to request details as soon as possible about the steps taken to find and freeze the assets of these two particular entities, including:

- how and when banks and other financial institutions were notified to find and block assets;

- what actions banks undertook to effect that obligation;

- what institutional barriers may have prevented quick implementation of the Sepah asset freeze (for example, Austria's lack of national authorities to immediately implement an asset freeze on persons designated by the UN)

- the total amount of assets found and frozen;

- whether they have evidence of asset flight from Bank Sepah and/or Bank Sepah International around the time of the passage of UNSCR 1747 on March 24, 2007;

- how they monitored or are monitoring asset flight;

and

- an update of how they are implementing the asset freeze of Sepah-related funds at Bank Austria Creditanstalt AG and Raiffeisen.

17. (U) Please slug replies to ISN, NEA and EUR. If you have any questions, please contact: Michelle New (ISN/CPI, 202-647-0186, newml@state.sgov.gov), Risa Mongiello (ISN/RA, 202-647-6599, mongiellorn@state.sgov.gov), Sean Misko (NEA/IR, 202-647-2520, miskosa@state.sgov.gov), and Rachel Loeffler (Treasury, 202-622-6172, loefflerr@tsdn.treasury.sgov.gov). Please use SIPDIS caption in post's response.

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